

ALICE M. HARDY

IBLA 79-202

Decided November 6, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest as to the award of oil and gas lease W 66393 for parcel WY 1589.

Affirmed.

1. Practice Before the Department: Generally -- Rules of Practice:
Appeals: Statement of Reasons

An appellant may adopt arguments prepared by another person and submit them as his or her own statement of reasons so long as appellant acts in good faith and the statement is relevant to the issues on appeal.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Drawings

An offeror's use of a leasing service address on a drawing entry card, of itself, does not disqualify the offer.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: Applications: Sole
Party in Interest

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous non-competitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden

is on a protestant attacking the validity of the offer to present competent evidence supporting the accusation that there is an agreement giving the agent an enforceable interest in the lease to be issued. In absence of such evidence, the protest is properly rejected.

APPEARANCES: Alice M. Hardy, pro se; Jason Warren, Esq., McDade and Lee, Washington, D.C., for appellee Sherwin Gandee.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Alice M. Hardy appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 8, 1979, dismissing her protest of the award of oil and gas lease W 66393 for parcel WY 1589 to Sherwin Gandee whose drawing entry card (DEC) received first priority in the November 1978 simultaneous drawing. Appellant's DEC received second priority.

The record indicates that Gandee's DEC bore a facsimile signature and was accompanied by disclosure statements from Gandee and Stewart Capital Corporation (Stewart), a leasing service, as to the relationship between them as required by 43 CFR 3102.6-1(a)(2) when an agent signs a DEC for an offeror. Gandee's statement reads in relevant part:

I have contracted with Stewart Capital Corporation to perform the following functions: affix my signature by means of rubber stamp or other facsimile to offering cards and this statement (which facsimile signatures shall be deemed mine for all purposes); supply me with the benefit of a ranking of the lease parcels available each month under the simultaneous program; prepare a set number of offering cards on my behalf for a set number of months; file such offering cards on the ranked parcels available each month during the life of my contract; advise me of any winning leases obtained under the program; advance any rental payments due on winning leases and bill me therefor immediately.

Neither Stewart Capital Corporation nor any other person or organization not named on my offering card has any interest in my offering. No agreement nor understanding exists between me and Stewart Capital Corporation or any other person not named on the offering card, either oral or written, by which Stewart Capital Corporation or such other person has received, or is to receive any interest in a lease if issued as a result of this filing, including royalty interest or interest in any operation agreement. I

do, of course, preserve the right, after filing this offer, to create a contract of assignment or sale of my interest in this offer, to any qualified person or organization. [Emphasis added.]

Stewart's statement is similar. Since Gandee's signature was a facsimile, BLM also required him to submit an affidavit concerning the circumstances surrounding the affixing of his signature. The affidavit indicates that Stewart selected the parcel and placed the signature on the DEC at Gandee's direction. ^{1/}

In a letter, dated January 2, 1979, appellant protested issuance of the lease to Gandee because he had not used "a true address" on the DEC. In dismissing this protest, BLM noted that this Board has held that

the fact that the address of the lease offeror and a filing service are identical merely indicates the use of a filing service and does not in itself give the offeror or agent a greater probability of successfully obtaining a lease or interest therein in violation of 43 CFR 3112.5-2. [Citations omitted.]

Appellant's notice of appeal indicates that she is appealing the dismissal of her protest because the return postal receipt for a registered letter she sent to Gandee at the leasing service address was not signed by Gandee but by an unauthorized person. Since filing her appeal, appellant has notified this Board of other instances where proper delivery of mail to Gandee was allegedly not obtained.

In her statement of reasons, appellant reiterates her argument that Gandee did not use a "true address" and contends that the use of a leasing service address by Gandee and other lease offerors "leads to and allows coercion, manipulation, and collusion between agents and purchasers of oil and gas leases." She asserts that common use of the leasing service address permits the leasing service to control contract with the winners of the simultaneous drawings. Appellant argues further that by virtue of such control Stewart has a "hidden interest" in the client's leases. She assumes that Gandee and Stewart have agreed to a "put option" on his leases and charges that they have violated the leasing regulations as to disclosure of interests and multiple filings. Except as to the allegations of improper mail delivery, appellant has presented no evidence substantiating the general charges of wrongdoing and violation of the regulations.

^{1/} We would note that this Board in Duncan Miller, 38 IBLA 154, 157 (1978), held that BLM could not require this information in the form of an affidavit under oath. While the imposition of this requirement was erroneous, it has no bearing on the issues presented in this appeal.

Counsel for Sherwin Gandee has moved that this appeal be dismissed summarily and has alternatively submitted an answer to appellant's statement of reasons. Gandee asserts initially that he has properly employed Stewart to perform certain functions on his behalf and has submitted the required disclosure statements. He claims that appellant appears to be attacking "hypothetical wrongdoings of filing services" without presenting evidence of any specific wrongdoing by Stewart. Gandee challenges the charges that improper delivery of mail to him occurred and asserts that the issue has no relevance to the merits of whether BLM should award the lease to him. Finally, he alleges that a third party, D. E. Pack, is directing this appeal in an attempt to obstruct or delay the obtaining of oil and gas leases by persons using leasing services. He bases that allegation on the fact that appellant's statement of reasons is virtually identical to those filed recently in similar cases.

[1] We turn first to Gandee's motion for summary dismissal. We agree that appellant's statement of reasons is nearly identical to those submitted in previous appeals to this Board by other parties and that this fact gives rise to the suggestion that an outside party has been involved in each appeal. At the same time, however, we note that appellant submitted the statement of reasons on her own behalf. She signed the statement and therefore certified that to the best of her knowledge she had the stated grounds as a basis for appeal. In a letter to the Board responding to Gandee's charge, appellant indicates that the statement represents her "thoughts and ideas," although she admits that they are similar to views held by D. E. Pack. Therefore, regardless of who actually drafted the arguments in her statement of reasons, it appears that appellant has adopted them as her own.

We believe it certainly is permissible for appellant in good faith to adopt arguments prepared by another and submit them on her own behalf so long as they are relevant to the issues on appeal. Although some of the arguments in the statement of reasons are erroneous given this Board's previous decisions on these same issues, Gandee has not produced sufficient evidence that appellant knew of the errors or was otherwise acting in bad faith for us to summarily dismiss the appeal.

[2] As noted, this Board previously has considered and rejected arguments similar to those of appellant. Appellant apparently views the common use of a leasing service address by Stewart's clients as evidence of a hidden interest in leases obtained by those clients. Thus, she concludes that regulations at 43 CFR 3102.7 requiring disclosure of such interests and 43 CFR 3112.5-2 prohibiting multiple filings were violated by Gandee and Stewart in submitting the offer at issue in this case. It is well established, however, that an offeror's use of a leasing service address on a DEC, of itself, does

not disqualify the offer. Kelley Everette, 41 IBLA 155 (1979); D. E. Pack, 40 IBLA 45 (1979); Dexter B. Spalding, 37 IBLA 4 (1978); Bruce F. Watkins, 36 IBLA 168 (1978); Virginia L. Jones, 34 IBLA 188 (1978) and cases cited.

[3] The disclosure statements submitted by Gandee and Stewart indicate that Stewart has no interest in leases won by Gandee. We do not find any evidence in the record which would suggest that Stewart has acquired an interest in Gandee's lease. It appears that Stewart merely provided a service to Gandee. Where, as in this case, there is no evidence in the record of any violation of the regulation, the burden is on the protestant to submit competent evidence supporting the accusation that there is an agreement giving the leasing service an enforceable interest in the lease to be issued. In absence of such evidence, the protest is properly rejected. Kelley Everette, *supra*; Jack Mask, 41 IBLA 147 (1979).

Although appellant has made general allegations as to wrongdoing by leasing services, we find that she has presented no evidence establishing that Stewart has an interest in Gandee's lease. Appellant assumes that Gandee has executed a "put option" with Stewart. The Board described the "put option" in D. E. Pack, 40 IBLA 45, 46 n.1 (1979), as follows:

The so-called "put option" describes an agreement between the leasing service and its client whereby the service agrees in advance to purchase, at the client's sole election, a specified percentage of any lease which the client might be awarded at a pre-determined price. However, the leasing service has no right to compel the client to convey any interest to it, so that when the lease issues to the client, the service has no enforceable interest therein. [Emphasis in original.]

There is no evidence that such an agreement exists in this case. However, even if the facts did show that Gandee had executed a "put option," the Board has held that a "put option" agreement does not constitute an "interest," as defined in 43 CFR 3100.0-5(b), which must be disclosed when making a simultaneous oil and gas lease offer. D. E. Pack, *supra*; Virginia L. Jones, *supra*.

Since Gandee and Stewart properly filed the required disclosure statements and no interest to the contrary has been shown, we conclude that the regulations on disclosure of interest and multiple filings have not been violated. See Kelley Everette, *supra*; Jack Mask, *supra*; D. E. Pack, *supra*; D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); John V. Steffans, 74 I.D. 46 (1967). Appellant has not met her burden of proof and her protest is properly rejected.

As for the alleged violations of the postal regulations, this Board has no jurisdiction over these matters.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

